

Message Text

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C O N F I D E N T I A L SANTIAGO 3551

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SUBJ: FORTHCOMING ROUND OF BILATERAL TALKS

REF: SANTIAGO 3324

1. SUMMARY: DESPITE THE SHORTCOMINGS OF THE 1914 TREATY, WE MIGHT CONSIDER WHAT ADDITIONAL WRITTEN AGREEMENTS MIGHT ENABLE US TO CONVERT ITS INITIAL STAGE INTO A VEHICLE FOR BINDING ARBITRATION. IN OUR PREPARATIONS FOR THE NEXT ROUND OF TALKS WE MAY ALSO WANT TO CONSIDER WHETHER TO RAISE CHILTELCO AND OTHER SEIZED OR NOT-YET-SEIZED U.S. PROPERTIES. WE MAY HAVE GONZALEZ AND OTHER LEGAL/POLICY PROBLEMS IN CONNECTION WITH THESE OTHER PROPERTIES WHICH INHIBIT OUR ABILITY TO BE FORTHCOMING ON CREDITS AND FINANCIAL EASEMENTS APART FROM PROGRESS ON COPPER ITSELF. END SUMMARY.

2. A FEW THOUGHTS IN PREPARATION FOR OUR FORTHCOMING TALKS WITH CHILE IN WASHINGTON MIGHT BE USEFUL. WE MIGHT CONSIDER WHETHER WE ARE WILLING TO USE THE 1914 TREATY AS A VESSEL INTO WHICH WE COULD POUR THE SUBSTANCE OF OUR POSITION ON BINDING ARBITRATION. IF WE COULD CONVERT THE FIRST STAGE OF THE 1914 TREATY PROCESS INTO A BINDING ARBITRAL PROCEDURE, ENLARGE THE NEUTRAL MEMBERSHIP OF THE COMMISSION TO THREE, AND CONFINE THE SUBSTANCE OF THE COMMISSION'S WORK BY AGREEMENT TO DEBT AND COMPENSATION MATTERS, THE RESULT MIGHT BE SOMETHING WORTH CONSIDERING SERIOUSLY. THIS WOULD BE FAR EASIER FOR THE CHILEANS TO ACCEPT THAN AN ARBITRAL TRIBUNAL. CONFIDENTIAL

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CONSTITUTED FROM SCRATCH BY A COMPLETELY NEW AGREEMENT. THERE IS SUBSTANCE TO THE CHILEAN CLAIM THAT SUCH AN INDEPENDENT AGREEMENT WOULD PRESENT THE ALLENDE GOVERNMENT WITH MOST SERIOUS POLITICAL DIFFICULTIES. A 1914 PROCEDURE CONVERTED INTO A BINDING ARBITRAL

INSTRUMENT WOULD ALSO PRESENT THE ALLENDE GOVERNMENT WITH DIFFICULT POLITICAL PROBLEMS - BUT IT COULD SLIGHTLY FACILITATE GOC SAVING OF FACE AND ENABLE THE GOC TO REPRESENT THE OUTCOME AS SOMETHING LESS THAN A ROUTE.

3. FROM OUR POINT OF VIEW, I SHOULD THINK WE MIGHT BE ABLE TO ACCEPT AN EXPLICIT AGREEMENT IN WRITING TO CONVERT THE FIRST STAGE OF THE 1914 TREATY MECHANISM INTO A BINDING ARBITRAL MECHANISM. PRESUMABLY, BOTH GOVERNMENTS WOULD HAVE TO COMMIT THEMSELVES BY FORMAL AGREEMENT TO OBSERVE AND IMPLEMENT THE 1914 TREATY COMMISSION'S REPORT, ASKING WHATEVER LEGAL AND CONSTITUTIONAL STEPS MIGHT BE NECESSARY TO DO SO. THE TWELVE-MONTH TIME FRAME MAY BE LONGER THAN WE WOULD LIKE, BUT IT IS DOUBTFUL THAT AN ARBITRATION COULD BE AGREED UPON AND CONCLUDED IN A MUCH SHORTER TIME FRAME IN ANY EVENT. SO FAR AS THE COMPOSITION OF THE COMMISSION IS CONCERNED, LETELIER HAS ALREADY INDICATED TO ME THAT HE WOULD BE PREPARED TO CONSIDER NAMING THIRD-COUNTRY NATIONALS ON BOTH SIDES BY MUTUAL UNDERSTANDING (SANTIAGO 2918). WE WOULD ALSO HAVE TO INSIST THAT ANY RECOURSE TO THE 1914 TREATY INCLUDE WRITTEN TERMS OF REFERENCE AND DEFINITION OF SUBJECT MATTER ACCEPTABLE TO US. WE HAVE HAD SOME INDICATIONS FROM THE CHILEAN SIDE THAT THEIR PROPOSAL TO EXAMINE THE GONZALEZ AMENDMENT AND MULTI-LATERAL LENDING INSTITUTIONS IS NOT AN ABSOLUTELY HARD POSITION (SANTIAGO 1946). THE DEPARTMENT MAY BE ABLE TO IMPROVE CONSIDERABLY ON THE FOREGOING VERY TENTATIVE FORMULATIONS, BUT I DO BELIEVE SOME EXAMINATION OF THE POSSIBILITIES OF CONVERTING THE 1914 TREATY TO OUR REQUIREMENTS MIGHT BE WORTHWHILE.

4. IN OUR PREPARATIONS FOR THE NEXT ROUND OF TALKS IT MIGHT ALSO BE WORTH CONSIDERING WHETHER WE SHOULD DISCUSS OTHER REQUISITIONED OR INTERVENED PROPERTIES IN CHILE (BESIDES COPPER). CHILTELCO (ITT) IS OF COURSE THE MOST IMPORTANT OF THEM, BUT THERE HAVE BEEN 23 OTHER COMPANIES WITH PARTIAL OR COMPLETE U.S. OWNERSHIP REQUISITIONED OR INTERVENED IN CHILE SINCE ALLENDE ASSUMED POWER. THE MOST RECENT THREE WERE THE COMPANIES SEIZED OR REQUISITIONED IN THE WAKE OF THE CONFIDENTIAL

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ABORTIVE TANK COUP OF JUNE 29 (SANTIAGO 2915). EVEN WITH THESE SEIZURES, THERE ARE U.S. INVESTMENTS IN CHILE WORTH OVER \$100 MILLION STILL UNDER THE CONTROL OF THEIR OWNERS. IF WE COULD BE EFFECTIVE IN DETERRING FURTHER SEIZURES, THIS WOULD OF COURSE BE DESIRABLE. I SHOULD ADD THAT I DO NOT THINK IT LIKELY THAT RAISING THIS ISSUE IN THE BILATERAL TALKS WILL HAVE MUCH EFFECT ON FUTURE DEVELOPMENTS. MOST OF THESE NON-REQUISITIONED COMPANIES HAVE BEEN LEFT ALONE FOR SPECIAL REASONS (BECAUSE CHILE GETS FOREIGN EXCHANGE FROM THE PORTILLO SKIING COMPLEX, IS WILLING FOR THE MOMENT TO LEAVE THE SHERATON HOTELS OPERATING FOR REASONS OF SERVICE, CONVENIENCE AND PRESTIGE, IS WILLING TO ALLOW CONTINENTAL TO SHOULDER THE MANAGEMENT AND FINANCIAL BURDENS OF THE SAGASCA COPPER MINE, ETC.). MOREOVER,

AS WAS DEMONSTRATED IN THE DOW CASE, CHILEAN GOVERNMENT CONTROL OVER LOCALLY INSPIRED UP POLITICAL MANEUVERING IS ERRATIC AND INCOMPLETE.

5. AN ADDITIONAL DIFFICULTY IN ANY MAJOR EFFORT TO EXAMINE THE SITUATION OF OTHER U.S. PROPERTIES IN CHILE IN THE BILATERAL TALKS - ASIDE FROM COMPLICATING THEM - IS THE QUESTION OF HOW WE HANDLE THE 23 COMPANIES ALREADY TAKEN BY THE GOC. THE ALLENDE GOVERNMENT IS NOT GOING TO HAND THEM ALL BACK. THIS MEANS THAT WE MAY HAVE GONZALEZ-HICKENLOOPER-POLICY PROBLEMS WITH THE GOC REGARDLESS OF PROGRESS ON COPPER, OR ANY POSSIBLE GOC FORBEARANCE REGARDING UNSEIZED U.S. INVESTMENTS HERE. ALL THIS ARGUES AGAINST PUSHING THE QUESTION TO THE FOREFRONT OF THE TALKS AT THIS TIME, ALTHOUGH WE MAY WANT TO MENTION THE SITUATION OF OTHER U.S. INVESTMENTS IN ORDER TO KEEP THE RECORD STRAIGHT. THESE CONSIDERATIONS ALSO ARGUE FOR CARE ON OUR PART NOT TO GET DRAWN TOO DEEPLY INTO A DISCUSSION, AT THIS STAGE OF THE TALKS, OF POSSIBLE "REWARDS" IN TERMS OF MULTILATERAL LENDING AND OTHER ECONOMIC BENEFITS WHICH PROGRESS ON THE COPPER QUESTION MIGHT BRING. IF REAL PROGRESS ON BINDING ARBITRATION RESULTS, THESE QUESTIONS WILL OF COURSE COME UP.

6. WE MAY EXPECT THE CHILEANS TO PRESS US QUITE HARD IN THE FORTHCOMING MEETING ON OUR ATTITUDE TOWARD THE 1914 TREATY. I CONTINUE TO BELIEVE THAT OUR INTERESTS WIL NOT BE SERVED BY ALLOWING THE CHILEANS TO PUSH US INTO AN OUTRIGHT REJECTION OF THE TREATY - WHETHER OR NOT WE TAKE UP THE IDEAS OUTLINED ABOVE FOR CONVERTING IT INTO A VEHICLE OF BINDING ARBITRATION. I
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HAVE THREE REASONS: FIRST, IT IS A TREATY IN FORCE, AND AN OUTRIGHT REFUSAL TO OBSERVE ITS TERMS PUTS US IN AN ANOMALOUS POSITION. SECOND, WE MAH FIND THE TREATY USEFUL AT SOME FUTURE TIME, WITH THIS OR SOME OTHER CHILEAN GOVERNMENT, EITHER AS A FACE SAVING DEVICE OR AN INSTRUMENT FOR OBTAINING A NEGOTIATED OR ARRANGED SOLUTION. THIRD, I DOUBT THAT IT SERVES US TO GIVE THE CHILANS A PROPAGANDA WEAPON WITH WHICH TO BERATE US PUBLICLY FOR INTRANSIGENCE. CHILE IS LIVING THROUGH ITS TENSEST AND MOST UNCERTAIN CRISIS SINCE THE ADVENT OF THE ALLENDE REGIME. THE SWEARING IN OF A NEW CABINET TODAYDOES NOT CHANGE THIS REALTY. NOW EVEN MORE THAN PREVIOUSLY, I BELIEVE IT SERVES OUR INTEREST TO AVOID GIVING THE ALLENDE REGIME POSSIBLE PRETEXTS FOR OPEN CONFRONTATION.
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